NO. 922

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ATLANTIC COMPANY,

Petitioner,

vs.

A. BROUGHTON, CLIFFORD BURDETT, CLAUDE COOPER, ASBURY CRITTLE, WILLIAM HANKS, JAMES JACKSON, L. P. KELLY, RUFUS McCRARY, ROY REESE, HARVEY ROLAND, FRED WHEELER, CLEVELAND HARRIS, CLARENCE MALLORY, ELCO SMITH, ROY TRIBBLE, JAMES TOBIE SMITH AND WILLIE PITTS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR REHEARING

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now ATLANTIC COMPANY, the above named petitioner, and presents this, its petition for a rehearing of the petition for writ of certiorari in this case.

I.

JURISDICTION

The petition for writ of certiorari was filed February 5, 1945; and was denied on April 23, 1945. This petition for rehearing is filed within less than twenty-five days thereafter, pursuant to the provisions of Rule 33.

II.

REASONS FOR PETITION FOR REHEARING

In Brooklyn Savings Bank vs. O'Neil, No. 445, and Dize Box Co. vs. Maddrix, No. 554, decided April 9, 1945, (unreported), involving the validity of releases of claims for unpaid minimum wages, overtime compensation and liquidated damages arising under the Fair Labor Standards Act, this Court held that such releases were invalid where there was no bona fide dispute with respect to coverage or the amount due under the Act.

In Dize vs. Maddrix, No. 554, this Court expressly pointed out that no dispute of any kind existed between the parties at the time the release was executed. This Court said:

> "Both parties knew at this time that more than $500 was due to respondent for minimum wages and overtime pay under the Act."

The Court further commented:

> "In the latter case (No. 554) both the Federal District Court and the Circuit Court of Appeals found 'that both parties knew more than $500.00 was due * * *' at the time the petitioner tendered $500 to the respondent in return for a comprehensive release covering all of the respondent's claims against the petitioner employer."

In Brooklyn Savings Bank vs. O'Neil, No. 445, the Court stated that a preliminary question arose as to whether the release "was given in settlement of a bona fide dispute between the parties with respect to *coverage or amount due under the* ***Act,*** **or whether it constituted a mere waiver of his right to** liquidated damages." (Emphasis supplied).

This Court then made the following finding from the evidence:

> "We think the record in this case shows that the release **was not given in settlement of a bona fide dispute between** employer and employee."

That this Court intended to leave open for future decision the exact question presented in the case at bar is clearly shown by the following significant language of this Court, to wit:

> "Our decision of the issues raised in No. 445 and No. 554 has not necessitated a determination of what limitation, if any, Section 16 (b) of the Act places on the validity of agreements between an employer and employee to settle claims arising under the Act if the settlement is made as the result of a bona fide dispute between the two parties, in consideration of a bona fide compromise and settlement. Neither of the above mentioned cases presented such issues for our consideration."

The controlling question presented by the petition for certiorari in this case, which was expressly left undecided in Brooklyn Savings Bank vs. O'Neil, No. 445, and Dize Box Co. vs. Maddrix, No. 554, is:

Where a bona fide dispute exists between an employer and an employee as to the amount, if any, of unpaid wages and overtime compensation due or claimed to be due under the

Fair Labor Standards Act of 1938 (29 USC 201, et seq.), the dispute relating entirely to past transactions and involving both a question of law as to whether the work done by the employees brings them within the coverage of the Act, and also a question of fact as to the number of overtime hours worked by the employees, may the parties, in order to avoid litigation, settle their differences by a bona fide agreement of accord and satisfaction?

In the case at bar a jury trial was demanded; and the Circuit Court of Appeals, in the decision under review, made the following determination:

> "The evidence as to whether a bona fide dispute existed between the parties, upon the question of what wages remained due and unpaid to each employee with whom the settlements were made, and as to whether such settlements were accepted in final and complete adjustment of that dispute, was conflicting. These issues of fact were submitted to the jury, but the jury was unable to agree upon a verdict, and was dicharged. The judgments appealed from were entered upon a renewed motion for a directed verdict under Rule 50 of the Federal Rules of Civil Procedure. *Therefore, these questions of fact remain unanswered in the record before us.*" (Emphasis supplied).

There was also a bona fide dispute between the parties involving a question of law as to whether the nature of the work done by the employees brought them within the coverage of the Act, and the "ascertained balance" remaining due as wages, referred to by the Circuit Court of Appeals, was unknown, uncertain, and was not ascertained when the settlements were made. Coverage was always in dispute.

III.

PUBLIC IMPORTANCE OF THE CONTROLLING QUESTION

The public importance of the question presented is stated in the petition for writ of certiorari, and this importance is accentuated since the recent decisions in Brooklyn Savings Bank vs. O'Neil and Dize vs. Maddrix. In those cases questions of public importance are decided, but the question presented in this petition for certiorari, which is of equal importance, is left undecided, bringing about doubt, uncertainty and confusion that will perplex the courts and litigants, and will make dubious instead of clarify the administration of the Act. A determination of the question presented in this case will supplement the two decisions so recently rendered and will be a definite and proper guide to those who must live under, as well as to those who must administer the Act. For the foregoing reasons, petitioner respectfully urges that a rehearing be granted; and that, upon further consideration, the order of April 23, 1945, denying the petition for certiorari be revoked, and that the writ of certiorari issue.

HUGHES SPALDING,
JOHN A. SIBLEY,
SUMTER M. KELLEY,
WILLIAM K. MEADOW,
Attorneys for Petitioner.

Of Counsel:

SPALDING, SIBLEY & TROUTMAN,
434 Trust Company of Georgia Building,
Atlanta 3, Georgia.

I, William K. Meadow, counsel for the above named petitioner, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for delay.

This 30 day of April, 1945.

William K. Meadow

Attorney for Petitioner

Office - Supreme Court, U. S.
MAY 2 1945
CHARLES ELMORE CROPLEY
CLERK

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